

Airport Coordination Limited

Guidance on the Interpretation of Justified Non-Utilisation of Slots

February 2024
Version 2

The following paper provides guidance on ACL's interpretation of Article 10(4) of the UK and EU Slot Regulation in relation to the justified non-utilisation of slots when calculating historic precedence. The guidance applies to all service types and will be administered in line with the principles of neutrality and non-discrimination. This guidance will be applied across all ACL airports. Should a carrier require further clarity on this document or would like ACL to review a particular set of circumstances against these guidelines, they should contact ACL.

1. Purpose

This document aims to provide guidance to airlines on how ACL will view reasons provided by the aircraft operators for the non-utilisation of slots but does not preclude further dialogue.

2. References

UK Slot Regulation - AIRPORTS SLOT ALLOCATION (AMENDMENT) (EU EXIT) REGULATIONS 2021 OF DECEMBER 2021 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at United Kingdom airports as amended including by EU Regulation 2020/459 of 30 March 2020 and by Commission Delegated Regulation 2020/1477 of 14 October 2020. 95/93 (amended)

- Article 8(1) and 8(2) – 'use it or lose it rule' and eligibility for historic precedence
- Article 10(4) – reasons for the non-utilisation of slots

EU Slot Regulation 95/93 (amended)

- Article 8(1) and 8(2) – 'use it or lose it rule' and eligibility for historic precedence
- Article 10(4) – reasons for the non-utilisation of slots

EU Regulation 261/2004 on passengers' rights

- Recital 14 – exclusion of obligation for air carriers when extraordinary circumstances occur

EUACA Recommended Practice (EUSG Effective 15 June 2023)

Worldwide Slot Guidelines

- Section 8.6 – 'use it or lose it rule'
- Section 8.7 – eligibility for historic precedence
- Section 8.8 – justified non-utilisation of slots

3. Preamble

Air carriers are required to operate 80% (unless otherwise amended) of the slot series held on 31 January for summer or 31 August for winter (HBD), as cleared by the coordinator, to qualify for their entitlement to the same series of slots in the next equivalent season.

Unless the air carrier can demonstrate to the satisfaction of the Coordinator that a series of slots has been operated, as cleared by the Coordinator, for at least 80% of the time for which it has been allocated, all the slots in that series will be placed in the slot pool, unless the non-utilisation can be justified. Justification can only take place for the specific reasons consistent with Regulation. Article 10(4) is a complete list of circumstances constituting force majeure/frustration events under the Regulation, not merely examples.

The UK & EU Regulation allows 20% cancellations after HBD. The 20% is made available to cover cancellations that are not covered by the alleviation afforded under the Regulation. It is for the carrier to determine how much of the 20% should be protected for unforeseen cancellations, however ACL is not able to flex its interpretation to accommodate commercial cancellations or circumstances that can be reasonably expected to occur. Alleviation will only be granted if the carrier demonstrates it has taken all reasonable steps to mitigate i.e. the cancellations could not have been avoided if all reasonable measures had been taken.

Nonetheless, a regular and transparent dialogue and exchange of information between the air carriers concerned and the Coordinator, as well as with other relevant stakeholders when applicable (e.g. the airport managing body, the ANSP, the regulatory authority, etc.), is strongly advised for the clarity of the process regarding the interpretation of justified non-use of slots.

4. Guidance

Unforeseeable and unavoidable circumstances

For non-utilisation to be justified, Article 10(4)(a) requires that there be unforeseeable and unavoidable circumstances outside the air carrier's control. ACL is required to determine the point at which circumstances would no longer be considered unforeseeable and/or unavoidable as alleviation is not perpetual. Whilst the exact situation may impact the determination of foresight, in general ACL would consider that alleviation is considered in the season that the circumstances present themselves, after which they become foreseen.

ACL will continue to review each alleviation request on its merits and the circumstances presented at the time. It is acknowledged that some circumstances can be avoided more than others, different carriers may be impacted differently, and the timing of such event may mean it is not appropriate for alleviation to be contained within the season the circumstances occurred.

ACL considers the following as examples of justifiable non-use of slots outside the air carrier's control, caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken¹.

Grounding of the aircraft type generally used for the air service in question - Article 10(4)(a)(bullet 1)

The grounding of an aircraft type (including engine type) by the manufacturers or by the relevant regulatory authority (e.g. Civil Aviation, EASA) for safety reasons.

ACL considers a grounding on an aircraft type (or engine type) to be an immediate requirement to cease operations of that type of equipment following a directive from the manufacturer or relevant regulatory authority. Such alleviation would extend to any directive related to any equipment installed on a given aircraft that would result in the requirement for the aircraft type to cease operations.

ACL would consider requests for alleviation where a manufacturer or relevant regulatory authority issues a directive that requires unexpected and compulsory inspection or maintenance to be performed by a given deadline. Where it is necessary to ground aircraft to comply with the directive then ACL would consider alleviation based on the circumstances presented. ACL would review the circumstances on a carrier by carrier basis and would encourage carriers to make contact as soon as possible to discuss the impact and potential cancellations. ACL would not normally consider changes to an aircraft or engine maintenance regime to constitute a grounding of the type (or engine type). Should such a change result in it being impossible to comply without grounding the fleet the carrier should contact ACL to discuss the circumstances being experienced.

Consequential impact caused by the grounding of an aircraft or engine type may also be considered for alleviation to allow air carriers flexibility to mitigate the impact of such grounding. However, the burden of proof rests with the air carrier to demonstrate that the consequential impact is a direct result of grounding that particular aircraft or engine type.

Closure (Including partial closure) of an airport or airspace – Article 10(4)(a)(bullet 2)

Cancellation made as a direct result of a total closure of an airport or airspace, where such closure arises from unforeseeable and unavoidable circumstances outside the carrier's control, would be considered for alleviation.

¹ References to Articles 10(4)(c) and 10(4)(d) of EU Slot Regulation are not included as they are directly related to other specific EU Regulations (No 2407/92 and No 2408/92 respectively)

ACL may also consider alleviation requests where an airport was partially closed. ACL determines a partial closure of an airport to have occurred if 10% of planned movements on the day concerned are cancelled due to the circumstances being experienced.

Alleviation will only be considered where it is directly attributable to the circumstances and not where a carrier could have reasonably prepared for such an event. For example, a carrier not having sufficient de-icing facilities to cope with winter weather where it is reasonably expected that winter conditions could occur, would not be considered for alleviation.

Consequential impact caused by the closure (including partial closure) of an airport or airspace may also be considered for alleviation to allow air carriers flexibility to mitigate the impact of such circumstances. However, the burden of proof rests with the air carrier to demonstrate that the consequential impact is a direct result of the closure.

In case of closures for a prolonged period, subsequent cancellations during a reasonable period following the opening, partial or total, may also be considered for alleviation. Such a reasonable period should be discussed between the air carrier and the coordinator, considering the details of the circumstances.

Air carriers should explore alternative routings if airspace is disrupted for a prolonged period and, wherever feasible, amend its slots accordingly. ACL will review such plans and be flexible if revised slot times are required within the declared capacity of the airport. Carriers should request ACL to count any operations outside of the historic determination parameters for such operational reasons.

Cancellations because of weather

Cancellations made because of weather are not covered by Article 10(4) and therefore would not be granted alleviation. Any cancellations would need to be funded from the 20% afforded to airlines in the Regulation.

Should the weather cause significant disruption resulting in the closure of the airport, ACL will grant alleviation under Article (10)(4)(a).

In event of weather resulting in a partial closure (10% of the days operation cancelled) of the airport, ACL will consider requests for alleviation under Article 10(4)(a).

Serious disturbance of operations at the airports concerned, including those series of slots at other Community airports related to routes which have been affected by such disturbance, during a substantial part of the relevant scheduling period – Article 10(4)(a)(bullet 3)

Substantial Part of the relevant scheduling period

To grant alleviation for serious disturbance under Article 10(4) (Bullet 3), ACL is required to determine a substantial part of the relevant scheduling period. Substantial is an inherently imprecise word, but ACL considers this to be the point at which any further cancellations made by the airline would result in a loss of historic entitlement of a series held for the entire season. For example, in a 31-week season, should circumstances meet all other elements of Article 10(4)(a), after a period of six weeks, the disturbance would have been considered to affect a substantial part of the relevant scheduling period and alleviation can be considered.

Any alleviation decision would be based on the impact of the event on operations at the airport and the advice given by the appropriate authorities. Where the airport remains open and there are no regulatory restrictions, but circumstances reduce passenger demand, ACL would not grant alleviation as this would be considered as commercial cancellations.

ACL urges an early dialogue in such circumstances.

Interruption of air services due to action intended to affect these services which makes it practically and/or technically impossible for the air carrier to carry out operations as planned – Article 10(4)(b)

Examples of action intended to affect the services of air carriers are included below, though the exact circumstances need to be considered carefully in each case:

- Internal strikes which have been formally announced or declared (e.g. by a recognised Union following a ballot process) will be considered for alleviation (though not staff ‘working to rule,’ unless this action has been publicly declared).
- External strikes by critical services (e.g. ATC, customs and immigration, aircraft manufacturers and any other critical service provider at the airport) that directly prevent that airline’s operation.
- The withdrawal or suspension of traffic rights because of bilateral disputes.

In all these examples (except for strikes), the alleviation should be time limited, giving the air carrier concerned a reasonable period to find solutions and/or alternatives to utilise the slots properly. Such a reasonable period should be discussed between the coordinator and the air carrier concerned, considering all the information available from other interested parties (e.g. the airport managing body, ANSP, the licencing authority, etc.).

ACL would consider external strikes to cover areas critical to flight such as fuelling companies (where no alternative is available), ATC, immigration, customs, security etc. Alleviation would not be extended to non-critical areas. Non-critical services may include catering companies, cleaners other than functions related to potable water and toilet servicing, back office administrative staff such as commercial sales etc. The carrier would need to demonstrate to ACL that the function is critical for alleviation to be considered.

Withdrawal or suspension of traffic rights and temporary withdrawal of permission to operate should be accompanied by appropriate notification from the relevant authority. Any such event should not be because of the actions of the carrier concerned where such actions are within the carrier’s control. For example, the leasing of an aircraft that does not have the minimum equipment required to operate to a given airport does not constitute justified non-use of slots.

There could also be other non-intentional actions outside the air carrier’s control that may affect the services of the air carrier concerned (e.g. the interruption of air services following a recommendation from the relevant authority). In these cases, air carriers should discuss the issue in detail with the coordinator and, where necessary, provide clear evidence of the reasons for requesting alleviation. If the justification for non-utilisation of slots is accepted by the coordinator, the alleviation should be time limited as agreed between the coordinator and the air carrier concerned. In general, it should not be extended further than the coordinated seasons that exist at the time the issue arises.

In all cases the coordinator should be flexible regarding the reactionary and rotational cancellations and delays arising from the disruptions outlined above which may affect many other flights on the same day. In this regard, air carriers should provide the coordinator with information demonstrating that the consequential impact is directly a result of the event/action should it be requested by the coordinator.

On the contrary, the following are examples of cancellations which should not be considered as justified non-use of slots:

- Cancellations due to public holidays unless the holiday is declared post the SRD resulting in the closure or partial closure of an airport.
- On-the-day technical/mechanical cancellations within the airline’s control (e.g. AOG) ACL would not consider any technical/mechanical cancellations on the day for alleviation and such cancellation should be funded from the 20% afforded to airlines by the Regulation.
- Commercial cancellations within the airline’s discretion.
- Late delivery of aircraft.

- Air Bridge breakdown.
- Lack of parking stands.
- Lack of operational crew.
- Lack of standby aircraft.
- Late return of aircraft from maintenance.
- Scheduled/planned maintenance.
- ATC slot restrictions.
- Infeasible schedules.
- Religious festivals such as Ramadan, Easter, Christmas etc.
- Tour Operators ceasing trading.
- Tour Operator Hotels not being ready.

A regular and transparent dialogue and exchange of information between the air carriers concerned and the coordinator, as well as with other relevant stakeholders when applicable (e.g. the airport managing body, the ANSP, the regulatory authority, etc.), is strongly advised for the clarity of the process regarding the interpretation of justifiable non-use of slots.

Mandated Cancellations

For cancellations that are mandated, and airlines are **forced** to cancel, ACL will consider requests under Article 10(4)(b).

5. Enforcement

The air carrier concerned is highly encouraged to contact the Coordinator and request alleviation from the 80/20 rule at the soonest (in advance when the non-utilisation of the slot can be anticipated or, alternatively, as soon as possible after the non-utilisation or disruption occurred), and to discuss how the Coordinator intends to treat the historic entitlements for the affected services, however any alleviation will be granted after the event. Air carriers must not leave it until the SHLs are sent out to advise the coordinator of claims for alleviation.

Slots made available by circumstances justified under Article 10(4) may be reallocated to other operators on a non-historic basis. The operators will be informed, at the time of allocation, that they will not be entitled to claim historic status.

6. Document Version

Version	Changes
Version 2	Merging additional guidance related to weather related alleviation, adding guidance on unforeseeable & unavoidable circumstances and substantial part of the relevant scheduling period.